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Opinion on transfer from Supreme Court

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. LUIS ANTONIO SANCHEZ, Defendant and Appellant.	F071824 (Super. Ct. No. CF94521140) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. W. Kent Hamlin, Judge.

Post-Conviction Justice Project, University of Southern California, Gould School of Law, Michael J. Brennan, Heidi L. Rummel, Jean Lantz and Anna Feingold, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Eric L. Christoffersen, Nicholas M. Fogg and Julie Hokans, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Levy, Acting P.J., Peña, J., and Smith, J.

INTRODUCTION

Appellant Luis Antonio Sanchez was 16 years old when he participated in a carjacking, robbery, and first degree special circumstance murder. In 1996, he was sentenced to life without the possibility of parole. In 2014, a writ of habeas corpus was granted, and resentencing was ordered in light of *Miller v. Alabama* (2012) 567 U.S. 460 (*Miller*). At the resentencing hearing in 2015, a term of life without parole was again imposed. Sanchez appealed the sentence on the grounds his sentence violated the Eighth Amendment and in our unpublished opinion filed December 16, 2016, we affirmed. Sanchez petitioned for review, review was granted, and on August 29, 2018, the California Supreme Court transferred the matter back to this court for a "determination of whether the matter is rendered moot in light of Senate Bill No. 394, signed into law on October 11, 2017." Senate Bill No. 394 amended Penal Code[1] section 3051 to provide that a juvenile who received a sentence of life without parole shall be eligible for parole during his or her 25th year of incarceration. (§ 3051, subd. (b)(4).)

We conclude Sanchez's Eighth Amendment challenge to his sentence has been rendered moot. (*People v. Franklin* (2016) 63 Cal.4th 261, 286.)

FACTUAL AND PROCEDURAL SUMMARY

On September 13, 1994, Sanchez and five codefendants talked about targeting "white boys" for a carjacking. Later that same day, Sanchez and the others carjacked a small truck and kidnapped 18-year-old Manuel Toste, a college student who was on his way home. After holding Toste at gunpoint and driving around, Toste was shot. Sanchez was sentenced to life without parole in 1996 for first degree special circumstances murder.

In consolidated case Nos. F024557 and F025403, this court affirmed Sanchez's conviction for murder with special circumstances and affirmed his sentence of life

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1 References to code sections are to the Penal Code unless otherwise specified.

without parole. (*People v. Lopez et al.* (Dec. 31, 1998, F024557) [nonpub. opn.].)[2] Our opinion noted that to find the special circumstances set forth in section 190.2, subdivision (d) true, the jury had to find Sanchez was a major participant and had a reckless indifference to human life. In affirming the life without parole sentence, our opinion stated:

> "Considering first the nature of the offense, Sanchez's participation in the crimes cannot be considered minor. Although the evidence indicated he was drinking alcohol and using marijuana and methamphetamine prior to the carjacking and murder of Toste, there is no evidence he did not understand or appreciate the nature of the offenses. After [codefendant] J. Lopez was initially unsuccessful in stopping a car at the intersection, it was Sanchez that urged [codefendants] Nava and Herrera to try. After Toste's car was taken, Sanchez held a gun on him while [codefendant] Loya took his wallet and watch. After the truck stopped and Toste attempted to run away, it was Sanchez who pointed a gun at him and ordered him to stop. Sanchez drove the truck away from the scene of Toste's murder and discussed with Loya and [codefendant] R. Lopez accomplishing another carjacking that evening. When Herrera said he wanted to get out of the truck, Sanchez stated 'No, everyone is going.'
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> "Focusing on the offender, Sanchez's callous comment that Toste shot himself evidences a total lack of remorse. Further, notwithstanding the report of his psychologist, the psychologist who examined him as part of the amenability determination concluded he had a 'criminal personality,' with no strong desire to change. That report also concluded that Sanchez's 'criminal behavior is so firmly established that there is little likelihood that he can be changed by a commitment to the California Youth Authority.' This conclusion is supported by Sanchez's previous criminal record. Although he did not have any *adult* convictions when he committed the crimes for which he was sentenced, at the age of 16 he had amassed quite an impressive juvenile record. He had prior juvenile adjudications for misdemeanor burglary, felony burglary, and possession of brass knuckles and a knife. At the time Sanchez committed the crimes for which he was being punished, rehabilitative efforts in the form of wardship, three separate occasions of formal probation, foster/group home placement, and a commitment to a local county facility for 180 days had been attempted—none of which had any apparent positive effect on him."

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2 We take judicial notice of our unpublished opinion.

In 2014, Sanchez's writ of habeas corpus was granted by the superior court and resentencing ordered in light of the United States Supreme Court's decision in *Miller*.

The resentencing hearing was held on May 20, 2015. Prior to the hearing, Sanchez submitted a 150-page sentencing memorandum; the People submitted a 33-page sentencing memorandum. The People's sentencing memorandum summarized the circumstances of the offense and the offender, Sanchez. The superior court indicated it had read both sentencing briefs and reviewed an updated probation office report.

Sanchez urged the superior court to impose a sentence other than life without the possibility of parole; the People urged that a sentence of life without parole be imposed. The superior court acknowledged that under then recent case law interpreting section 190.5, there was no presumption in favor of life without parole for a special circumstance murder by a juvenile. The superior court heard extensive argument from Sanchez's counsel and the People. At the conclusion of argument, the superior court recessed to consider the matter.

When the superior court reconvened, it noted that it also had reviewed the sentencing transcript from Sanchez's trial. The superior court stated that it had to consider circumstances in mitigation and aggravation and had "some level of empathy or sympathy for a young man who grew up in adverse circumstances, and certainly those circumstances contributed to his criminality and participation in the crime." The superior court also stated, however, that while it was a "tragedy" that Sanchez had grown up in difficult circumstances, "a significant percentage of those who grow up in those tragic circumstances" do not "participate in conduct anything like what is before this court." The superior court queried whether Sanchez was that "rare, irredeemable juvenile" and noted the varying verdicts reached by the jury as to the multiple defendants.

Factors noted by the superior court in reaching its decision included that Sanchez was present and participated in the decision to carjack Toste; Sanchez was present when the decision was made to retrieve weapons, which assured the potential for great

violence; Sanchez was the participant who held the gun on Toste and said "freeze" when Toste attempted to flee; Sanchez made sure Toste was unable to flee and then allowed another participant to take the gun in order to shoot Toste in the head; and Sanchez exhibited no remorse after the crime, laughing and claiming Toste shot himself. The superior court rejected the notion that the circumstances had just "spiraled out of control" after Sanchez used alcohol, marijuana, and methamphetamine.

The superior court opined that to "execute" Toste "in the middle of nowhere and leave him for dead on the side of the road" was "unthinkably cruel." The superior court found the circumstances of the crime to reflect a disrespect for human life. The superior court noted that Sanchez's "protection of his coparticipants" and "dispassionate, cruel description of the crime," demonstrated a lack of remorse. The superior court concluded "the circumstances of the offense and [Sanchez's] involvement in it demonstrate the kind of irredeemable corruption that the *Miller* case speaks to."

The superior court further found that "the circumstances that led him to be connected with these individuals on this date and in this situation are not consistent" with someone "who is behaving in a manner that is indicative of youthfulness and a lack of perspective." The superior court characterized Sanchez "at the time and circumstances of this crime, a product of his criminality, his criminal mindset, and his cruel and depraved heart." The superior court stated that:

> "The crime involves great violence and an extraordinary degree of cruelty, viciousness, and callousness. He was armed during the commission of this crime personally, and handed the weapon to the person who used it to kill [Toste]. The victim was rendered vulnerable, both by his being jumped by a number of youths, armed with firearms, and then by being taken to a remote location. And while we can't say that Mr. Sanchez necessarily induced others to participate, he certainly occupied some position of leadership as compared to others in the group."

The superior court noted that Sanchez had a juvenile record prior to the murder; his crimes were increasing in seriousness; he was on probation at the time the murder was

committed; and there was no provocation whatsoever for the murder. The superior court emphasized that a life without parole (LWOP) sentence was not being imposed because of any presumption, but because Sanchez's "youthfulness was really an insignificant factor" in the crime and Sanchez's level of participation and cruelty during the crime warranted imposition of a sentence of life without parole.

Sanchez timely filed a notice of appeal and in our unpublished decision filed on December 16, 2016, we again affirmed the LWOP sentence. Sanchez petitioned for review and review was granted on March 1, 2017. On August 29, 2018, the California Supreme Court transferred the matter back to this court to determine if Sanchez's Eighth Amendment challenge to his sentence was moot. Pursuant to California Rules of Court, rule 8.200(b), the parties had an opportunity to submit supplemental briefing after the matter was transferred to this court. No party submitted any supplemental brief.

DISCUSSION

Sanchez's sole contention on appeal is that imposition of a term of life without parole for an offense he committed as a juvenile violates the Eighth Amendment. Specifically, he contends it is cruel and unusual and the superior court failed to consider the *Miller* factors. We review the superior court's sentencing determination for abuse of discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847; *People v. Palafox* (2014) 231 Cal.App.4th 68, 91 (*Palafox*).)

The California Supreme Court, in its order transferring the matter back to this court, asked this court to determine whether the matter is rendered moot by Senate Bill No. 394 (Stats. 2017, ch. 684, § 1.5, eff. Jan.1, 2018). Senate Bill No. 394 amended section 3051 to make a juvenile offender serving an LWOP sentence eligible for parole after 25 years. (§ 3051, subd. (b)(4).)

I. Eighth Amendment

The Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishment. Embodied in the Eighth Amendment is the concept of

proportionality; in other words, punishment for the crime should be proportional to the offense and sentences that are grossly disproportionate violate the Eighth Amendment. (*In re Coley* (2012) 55 Cal.4th 524, 538.) In *Miller*, the United States Supreme Court held that mandatory life imprisonment without the possibility of parole for juveniles convicted of murder violates the Eighth Amendment. (*Miller, supra,* 567 U.S. at pp. 465, 479.)

In *Montgomery v. Louisiana* (2016) ___ U.S.___, 136 S.Ct. 718, 734 (*Montgomery*), the United States Supreme Court stated "it will be the rare juvenile offender who can [be sentenced to LWOP.]" The court in *Montgomery* went on to state that if a juvenile's offense reflects "transient immaturity" as opposed to "irreparable corruption," then imposition of an LWOP sentence violates the Eighth Amendment. (*Id.* at p. 735.)

Section 190.5, subdivision (b), which specifies the penalty for a juvenile convicted of murder with special circumstances as life without parole, or at the discretion of the court, 25 years to life, confers discretion on the trial court at sentencing. (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1360, 1379-1380.) The trial court has discretion to sentence a 16- or 17-year-old juvenile convicted of special circumstance murder to LWOP or 25 years to life, with no presumption in favor of LWOP. (*Ibid.*)

II. Eighth Amendment Considerations

Sanchez contends that imposition of an LWOP sentence is cruel and unusual punishment under the Eighth Amendment. The court in *Miller* stated the Eighth Amendment did not categorically bar imposition of an LWOP sentence on juveniles in homicide cases; it requires a sentencing judge to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." (*Miller, supra,* 567 U.S. at p. 480.) Neither the Eighth Amendment nor California law categorically precludes imposition of an LWOP term on a juvenile offender. (*Palafox, supra,* 231 Cal.App.4th at p. 90.)

Prior to imposition of an LWOP sentence pursuant to section 190.5, subdivision (b), a trial court is required to consider aggravating and mitigating factors set forth in the Penal Code and in the California Rules of Court, as well as the *Miller* factors. (*Palafox, supra,* 231 Cal.App.4th at p. 89.) *Miller* factors a superior court should consider when sentencing a juvenile for a homicide offense include: (1) the juvenile's age and its impact on his or her culpability; (2) the juvenile's family and social circumstances; (3) the circumstances of the homicide, including the juvenile's role in the offense; (4) the impact of the juvenile's youth on his or her ability to deal with law enforcement and assist in a defense; and (5) the possibility of rehabilitation. (*Miller, supra,* 567 U.S. at pp. 477-478; *People v. Chavez* (2014) 228 Cal.App.4th 18, 30.)

Sanchez contends the superior court had to state each *Miller* factor on the record and discuss the evidence applicable to each factor. The law imposes no such requirement. The superior court is deemed to have considered all relevant sentencing criteria in the absence of evidence to the contrary. (*People v. King* (2010) 183 Cal.App.4th 1281, 1322.) Here, there is no evidence the superior court failed to weigh the relevant criteria; the evidence discloses a thoughtful weighing of all factors relevant in the case.

The record indicates the superior court considered the relevant sentencing factors at resentencing in Sanchez's case. The superior court noted that it had reviewed the extensive briefing submitted by the parties. Sanchez's brief was 150 pages and thoroughly discussed all the *Miller* and other sentencing factors. After hearing lengthy argument, the superior court noted there was no presumption under section 190.5 for an LWOP term. The superior court weighed the *Miller* factors, found that Sanchez's family circumstances and youth played a limited role in the crime, and found the circumstances of the offense demonstrated cruelty and irreparable corruption warranting an LWOP term.

As the *Miller* court indicated, the hallmark characteristics of youth are "immaturity, impetuosity, and failure to appreciate risks and consequences." (*Miller, supra,* 567 U.S. at p. 477.) Here, Sanchez exhibited sophistication and coordination in a well-planned carjacking and attack on Toste with his codefendants, prior to which Sanchez and his codefendants made sure to arm themselves with weapons. Sanchez exhibited an appreciation of the consequences when he prevented Toste from fleeing by holding a gun on Toste and ordering him to stop; then later claimed that Toste somehow shot himself in an attempt to escape consequences for his actions.

Sanchez had amassed a significant criminal record by the time of the murder, engaging in criminal activity that was increasing in seriousness. Multiple attempts at rehabilitation had been tried prior to the murder, all to no avail. He was on probation at the time of the murder. Sanchez exhibited no remorse after the murder, falsely attempting to claim that Toste somehow shot himself. Sanchez's psychological evaluation showed he had a criminal mentality, with no real desire to change.

The circumstances of the crime were found by the superior court to be cruel and callous. An 18-year-old college student was surrounded by several teenagers with weapons, carjacked, kidnapped with a gun to his head, and prevented from escaping by Sanchez, who held the gun at Toste's head and then allowed a codefendant to use the gun to shoot Toste in the head. After Toste was murdered, he was abandoned by the side of the road while Sanchez and his codefendants discussed whether to go to the Tulare County Fair or commit another carjacking.

As required by *Miller,* the superior court considered all relevant factors attendant to Sanchez's status as a juvenile offender, in addition to aggravating and mitigating factors set forth in the Penal Code and in the California Rules of Court. (*Palafox, supra,* 231 Cal.App.4th at p. 89, 92.) The sentence the superior court imposed at resentencing, life without the possibility of parole, does not violate the state or federal Constitution. (*Id.* at p. 92.)

The record discloses the superior court's decision was not an abuse of discretion; the superior court exercised the individualized discretion contemplated by *Miller*. (*Miller*, *supra,* 567 U.S. at pp. 477-480.) Moreover, our independent review of the factors, including Sanchez's youth and its hallmark characteristics; information on Sanchez's family life and background; the circumstances of the murder and role of substance abuse; Sanchez's ability to assist in his defense; and the possibility of rehabilitation, support the superior court's conclusion that Sanchez's youth was an insignificant factor in the crime. (*Palafox*, *supra*, 231 Cal.App.4th at pp. 91-92.)

III. Eighth Amendment Claim is Moot

Despite the superior court's application of *Miller* factors at resentencing, Sanchez contends his LWOP sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment. The addition of section 3051, subdivision (b)(4) making Sanchez eligible for parole after 25 years of incarceration moots this contention. (*People v. Franklin*, *supra*, 63 Cal.4th at p. 286; *People v. Lozano* (2017) 16 Cal.App.5th 1286, 1289.)

In *Franklin*, the California Supreme Court considered an appeal filed by a defendant who was convicted of a murder committed when he was 16 years old and sentenced to a total indeterminate term of 50 years to life in prison. (*Franklin*, *supra*, 63 Cal.4th at p. 268.) Relying on *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*), *Miller*, and *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*), the defendant in *Franklin* challenged his sentence as unconstitutional under the Eighth Amendment. (*Franklin*, at p. 268.) The *Franklin* court determined that the defendant's constitutional claim was rendered moot by the enactment of section 3051, which made the defendant eligible for a parole hearing after 25 years of incarceration. (*Franklin*, at p. 268.)

The Legislature enacted section 3051 specifically to comply with United States Supreme Court and California cases concerning juvenile indeterminate life sentences. "The purpose of this act is to establish a parole eligibility mechanism that provides a

person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity, in accordance with the decision of the California Supreme Court in [*Caballero*] and the decisions of the United States Supreme Court in [*Graham*] and [*Miller*]." (Stats. 2013, ch. 312, § 1.) "The statute establishes what is, in the Legislature's view, the appropriate time to determine whether a juvenile offender has 'rehabilitated and gained maturity' [citation] so that he or she may have 'a meaningful opportunity to obtain release.'" (*People v. Franklin, supra,* 63 Cal.4th at p. 278.)

As originally enacted, section 3051 excluded several categories of juvenile offenders from a youth offender parole hearing, including those who were serving sentences of LWOP. (*People v. Lozano, supra,* 16 Cal.App.5th at p. 1290.) In 2017, the Legislature amended section 3051 to provide for parole eligibility hearings for those juveniles serving an LWOP sentence. Subdivision (b)(4) of section 3051, effective January 1, 2018, states:

> "A person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is life without the possibility of parole shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions."

Under section 3051, subdivision (b)(4) juvenile offenders serving LWOP would be eligible for a youth offender parole hearing during his or her 25th year of incarceration, well within the normal life expectancy of a juvenile. Prior to passage of Senate Bill No. 394, Sanchez's LWOP sentence meant he was not eligible for parole. (*People v. Lozano, supra,* 16 Cal.App.5th at p. 1289.) In *Franklin, supra,* 63 Cal.4th 261, 283-284, the California Supreme Court held that a juvenile serving a sentence that is subject to parole eligibility after 25 years is serving a "sentence that includes a meaningful opportunity for release during his 25th year of incarceration." (*Franklin,*

supra, at p. 280.) The court stated: "Such a sentence is neither LWOP nor its functional equivalent." (*Ibid.*) Accordingly, the court held the defendant's claims under *Miller* were moot. (*Franklin, supra,* at p. 280.)

Subdivision (b)(4) of section 3051 specifically applies to Sanchez—an offender who committed his crime when he was under the age of 18 and who is eligible for release on parole during his 25th year of incarceration. Sanchez was born in 1978 and sentenced in 1996; he will be in his early 40's when he is eligible for a juvenile offender parole hearing. As in *Franklin,* Sanchez's eligibility for release during the 25th year of incarceration is not the functional equivalent of LWOP. (*People v. Franklin, supra,* 63 Cal.4th at p. 279.) The eligibility for release during the 25th year of incarceration moots Sanchez's Eighth Amendment contention. (*Id.* at p. 280.)

"The Legislature did not envision that the original sentences of eligible youth offenders would be vacated and that new sentences would be imposed to reflect parole eligibility." (*People v. Franklin, supra,* 63 Cal.4th at p. 278.) The juvenile offender remains bound by the original sentence. (*Ibid.*) Section 3051 changes by operation of law the manner in which the juvenile offender's sentence operates "by capping the number of years that he or she may be imprisoned before becoming eligible for release on parole." (*Id.* at pp. 278-279.)

Section 3051, subdivision (b)(4) means that Sanchez is now serving a sentence that provides a meaningful opportunity for release based on demonstrated maturity and rehabilitation; he is not serving the equivalent of a LWOP sentence. (*People v. Lozano, supra,* 16 Cal.App.5th at p. 1289.) Sanchez's case need not be remanded for further hearings; presumably Sanchez agrees, as he did not submit any supplemental brief asking for or arguing that remand was needed. Unlike the defendant in *Franklin,* here Sanchez was provided an opportunity at his 2015 resentencing hearing to submit evidence addressing the *Miller* factors and put on the record the kind of information that would be relevant at a section 3051, subdivision (b)(4) youth offender parole hearing.

"The Legislature has made the determination in Senate Bill 394 that neither [Sanchez], nor any other similarly situated California juvenile homicide offender, will face a sentence that possibly runs afoul of the Eighth Amendment as interpreted in *Miller*. The Constitution does not require that [Sanchez] be resentenced or receive any additional reduction in punishment." (*People v. Lozano, supra*, 16 Cal.App.5th at p. 1292.)

DISPOSITION

The sentence is affirmed.